

STATE OF MAINE  
SAGADAHOC, SS.

BUSINESS & CONSUMER COURT  
LOCATION: WEST BATH  
DOCKET NO.: BCD-WB-CV-07-33

FIBER MATERIALS, INC.,

Plaintiff

v.

ORDER ON DEFENDANT LINDEKUGAL'S  
MOTION TO DISMISS

MAURICE SUBILIA, ET AL,

Defendants

This matter is before the court on the motion of Defendant Edward Lindekugel to dismiss all claims against him in Counts I through VI of Plaintiff's Amended Complaint because they do not adequately alleged facts supporting a civil conspiracy claim and, therefore, fail to state a claim against him upon which relief can be granted. M.R. Civ. P. 12(b)(6).

Plaintiff and Defendant Lindekugel agree that a motion to dismiss pursuant to Rule 12(b)(6) "tests the legal sufficiency of the complaint and, on such a challenge, 'the material allegations of the complaint must be taken as admitted.'" *Shaw v. Southern Aroostook Comm. Sch. Dist.*, 683 A.2d 502, 503 (Me. 1996) (quoting *McAfee v. Cole*, 637 A.2d 463, 465 (Me.1994)). When reviewing a motion to dismiss, this court examines "the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* A dismissal under M.R. Civ. P. 12(b)(6) will be granted only "when it appears beyond a doubt that the plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Id.* (quoting *Hall v. Bd. of Env'tl. Prot.*, 498 A.2d 260, 266 (Me. 1985)).

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Applying the foregoing standard, and also having in mind the pleading requirements of Rule 8(a), the court concludes that the claims against Defendant Lindekugel alleged in the Amended Complaint provide him with fair notice and are sufficient to withstand his motion to dismiss.<sup>1</sup> M.R. Civ. P. 8(a); *Shaw v. Southern Aroostook Community Sch. Dist.*, 683 A.2d 502,503 (Me. 1996).<sup>2</sup>

Based on the foregoing, and pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Order on the Civil Docket by a notation incorporating it by reference, and the entry is

Defendant Edward Lindekugel's motion to dismiss the claims against him in the Amended Complaint is DENIED.

Dated: November 23, 2009



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Thomas E. Humphrey  
Chief Justice, Superior Court

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<sup>1</sup> See, e.g. Amended Complaint ¶¶ 1, 11, 13-14, 24-58, 112, 116, 120, 124, 128 and 132.

<sup>2</sup> Rule 8(a) requires less specificity than the common law or those claims covered by Rule 9(b). See *Yargeau v. City of Portland*, 566 A.2d 1088, 1089 (Me. 1989) (under common law a complaint “must plead precisely and fully every fact necessary to constitute the cause of action alleged”); and M.R. Civ. P. 9(b) (“In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.”) Further, although Mr. Lindekugel maintains that this court is bound by the United States Supreme Court’s discussion of Fed. R. Civ. P. 12(b)(6) in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the court notes that, to the extent *Twombly* alters the traditional standard of review rather than simply clarifying it, Maine’s Law Court has yet to adopt that standard or apply it to Maine’s rule. See *Twombly*, 550 A.2d at 563 (noting that the “no set of facts” language typically used to describe the 12(b)(6) standard constitutes an “incomplete, negative gloss on an accepted pleading standard: once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint”). *Id.*